



STATE BOARD OF EQUALIZATION

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March 12, 1992

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Executive Director

Re: Distribution of Real Property by M, Ltd.,
a California Limited Partnership

Dear Mr. :

This is in response to your letter of November 18, 1991 to Richard Ochsner, Esq. in which you request our opinion that the following transfers proposed in your letter will not result in a change in ownership for property tax purposes. We regret that circumstances have prevented an earlier reply.

Your firm represents M, Ltd., a California limited partnership (the "Limited Partnership"), in connection with a proposed distribution to its partners of three commercial properties located in Orange County.

The Limited Partnership originally was formed to develop a residential community. The Limited Partnership, however, also acquired three commercial properties, the first known as the "H Site", the second known as "Site 5", and the third known as "Site 4".

Concurrently with acquiring the three commercial properties, four classes of partners were established within the Limited Partnership. "Class A" partners are allocated the profits, losses and distributable cash flow derived from the residential community; "Class B" partners are allocated the profits, losses and distributable cash flow derived from the H Site; "Class C" partners are allocated the profits, losses and distributable cash flow derived from Site 5; and "Class D" partners are allocated the profits, losses and distributable cash flow derived from Site 4.

Two assignments of Class B limited partnership interests

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were made as of January 1, 1991. The assignments were merely changes in the form in which certain individuals hold Class B limited partnership interests. In the first assignment, one of the Class B limited partners (itself a limited partnership) assigned its 10 percent Class B interest to its constituent partners (who were also Class B limited partners of the Limited Partnership) in accordance with their proportionate share of profits and losses in the distributing partnership; and in the second assignment, one of the assignees (itself a limited partnership) in turn immediately assigned the 8.1 percent Class B interest it had received to its constituent partners (who were also Class B limited partners of the Limited Partnership) in accordance with their proportionate share of profits and losses in the distributing partnership.

The ownership of the Class A, Class B, Class C and Class D partnership interests following the January 1, 1991 assignments is set forth in the left column of the table attached to this letter as "Attachment 1".

After the January 1, 1991 assignments, The B Corporation assigned its Class B, Class C and Class D partnership interests to its sole shareholder, R F. B , who in turn immediately assigned the Class B, Class C and Class D interests to B Commercial Corporation, a California corporation of which R F. B is the sole shareholder.

The Limited Partnership proposes to distribute each commercial property to the partners comprising the Class which currently has allocated to it the profits, losses and distributable cash flow derived from the commercial property. You state that each distribution would be made in a manner such that each partner's respective proportional interest in each property would remain the same after the transfer. For example, the H Site would be distributed to the Class B partners, and the interest of B Associates III (one of the Class B partners) in the H Site would be 38 percent both before (by virtue of its Class B interest in the Limited Partnership) and after (by virtue of its direct ownership interest in the Hughes Site) the transfer.

The distribution would result in the Limited Partnership's being comprised of the partners which currently comprise the Class A partners. Each Class A partner's interest in the Limited Partnership would be unchanged as a result of the distribution.

In the second step of the proposed transaction, each partner to which the Limited Partnership will have distributed an interest in a commercial property would contribute his or its

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respective interest in the commercial property to a new limited partnership. You state that each contribution would be made in a manner such that each partner's respective proportional interest in each property would remain the same after the transfer. For example, all interests in the H Site would be contributed to R: N H Partners L.P., a California limited partnership, and the interest of B Associates III in the H Site would be 38 percent both before (by virtue of its direct ownership interest in the H Site) and after (by virtue of its interest in the profits, losses and distributable cash flow of R: N H Partners L.P.) the transfer.

The partnership interests in both the Limited Partnership and the three new limited partnerships which would result from the proposed distribution and contribution of the commercial properties are set forth in the right column of the table attached to this letter as "Attachment 1".

Based on the foregoing, you request an advance formal ruling that the proposed distribution by the Limited Partnership and the proposed contributions to the new limited partnerships will not constitute a change in ownership of the three commercial properties within the meaning of Section 60 of the Revenue & Taxation Code.*

Section 60 defines "change in ownership" to mean:

A transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 61(i), except as otherwise provided in Section 62, includes as a change in ownership:

The transfer of any interest in real property between a corporation, partnership, or other legal entity and a shareholder, partner, or any other person.

Section 62(a)(2), however, excludes from change in ownership:

Any transfer between... individuals or between legal entities, such as a cotenancy to a partnership, [or] a partnership to a....

* All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

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cotenancy, which results solely in a change in the method of holding title to the real property and in which proportional ownership interests... represented by... partnership interest... in each and every piece of real property transferred, remain the same after the transfer....

Although you state that the proposed distributions of real property from the Limited Partnership and the proposed contributions of that real property to the new limited partnerships would be made in a manner such that each partner's respective proportional interest in each property would remain the same after the transfer, that is the issue here. That is, with respect to the distributions of real property from the Limited Partnership and the contributions of real property to the new limited partnerships, will each partner's respective proportional interest in each property remain the same after the transfers?

The term "ownership interests" used in Section 62(a)(2) is not defined in the code nor in the Property Tax Rules which interpret Section 62(a)(2).

The identical term, however, is used in sections 64(a), 64(c) and 64(d) and while not defined in those provisions, the language of section 64(d) makes it clear, in our view, that the term "ownership interests" has the same meaning for purposes of section 64(a), (c) and (d) as it has for purposes of section 62(a)(2).

With respect to partnerships, Property Tax Rule 462(j)(4)(A)(ii), in effect, defines "ownership interest" as used in section 64(c) as "the total interest in both partnership capital and profits". Accordingly, that is the definition of "ownership interests" we believe is applicable in applying section 62(a)(2) to transfers of real property to and from partnerships. Thus, in order for section 62(a)(2) to apply to a transfer of real property from a partnership to its partners each partner's total interest in both partnership capital and profits before the transfer must be the same as that partner's undivided interest in the real property after the transfer.

For purposes of Section 62(a)(2), a partner's capital interest, in our view, is the percentage of the value of the partnership's equity that would be distributable to such partner upon a hypothetical liquidation of the partnership as of the date of the transfer of the real property from the partnership to the partners.

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Similarly, for purposes of section 62(a)(2), a partner's profits interest, in our view, is that percentage of total profits earned through the date of the transfer of real property from the partnership to the partners which would be attributed to such partner if the partnership's tax year terminated on that date.

As indicated above, in order for the transfers of real property from the Limited Partnership to the partners to be excluded from change in ownership under section 62(a)(2), each partner's percentage of capital and profits must be identical before the transfer and must be the same as the undivided interest in the real property received by each respective partner from the Limited Partnership.

Although you state that the percentage interest of the partners will be the same before and after the transfers by the Limited Partnership (38% in the case of B Associates III (one of the Class B partners), it does not appear that the percentage interest of each partner referred to on Exhibit A of the first amendment to agreement of limited partnership of the Limited Partnership (attached hereto as Exhibit A) corresponds to the total interest in capital and profits of each partner. For example, while the Class B percentage interest of B Associates III is 38%, its capital equity interest (which, as defined in the amended partnership agreement means the same as "capital") is, according to Exhibit A, \$2,032,463.44 or 76%. Further, several of the Class B limited partners for which a percentage interest is shown on Exhibit A have a zero capital equity interest.

There are also inconsistencies between the stated percentage interests and capital equity interests with respect to the Class C and Class D partners. Further, it does not appear from the amended limited partnership agreement that the capital and profits interests of each Class B, C and D limited partner are identical. Accordingly, section 62(a)(2) would not be applicable to the first step of the proposed transaction, the transfer from the Limited Partnership to the partners.

Moreover, from a review of the agreements of the new limited partnerships, it appears that section 62(a)(2) would not apply to the proposed transfers from the partners to the new limited partnerships for the same reasons.

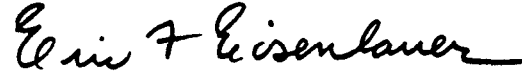
Consequently, the proposed transfers from the Limited Partnership to the partners and from the partners to the new limited partnerships would be changes in ownership.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any

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county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

Very truly yours,

A handwritten signature in cursive script, reading "Eric F. Eisenlauer".

Eric F. Eisenlauer
Senior Tax Counsel

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Enclosures